

REMARKS

It is respectfully requested that this application be reconsidered in view of the following remarks and that all of the claims remaining be allowed.

Group Election

In the Office Action, the Examiner required the following restriction under 35 U.S.C. § 121:

- I. Claims 1-27, and 57, drawn to a peptide comprised of formula I, a method of its making, and a composition comprising the peptide, and its method of eliciting an immune response, classified in class 530, subclass 300.
- II. Claims 28-31 and 34, drawn to an antibody specific for peptide of I, classified in class 530, subclass 387.1.
- III. Claims 32 and 33, drawn to a pharmaceutical composition, classified in class 424, subclass 1.49.
- IV. Claims 35-41, drawn to a vaccine, classified in class 424, subclass 9.2.
- V. Claims 42-45, drawn to a method of preventing microbial infection by administering a peptide, classified in class 514, subclass 2.
- VI. Claims 46-48, drawn to a method of treating a microbial infection by administering an antibody, classified in class 424, subclass 130.1.
- VII. Claims 49-54, drawn to a method of detecting the presence of a microorganism, classified in class 436, subclass 500.
- VIII. Claims 55 and 56, drawn to method of the presence of titer against a microbial protein, classified in class 436, subclass 500.

In response, Applicants elect Group I with traverse.

At the outset, Applicants wish to thank the Examiner for combining claims 1-11, 14-27 and 57 (Group I in the last restriction requirement, dated September 22, 2003) with claims 12-13 (Group II in the last restriction requirement) to one group (Group I) in the instant restriction requirement. Applicants are still of the opinion that Groups I and IV should be rejoined to form a single group of claims 1-27, 35-41 and 57. In addition, Applicants believe that Groups II and III should be rejoined to a single group of claims 28-34.

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (a) The inventions must be independent or distinct as claimed; and
- (b) There must be a serious burden on the Examiner if restriction is not required.

MPEP §803. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. *Id.*

In the instant application, there would not be a serious burden on the Examiner if Groups II and III are rejoined. Group II is drawn to an antibody specific for peptides comprising formula I, and Group III is drawn to a pharmaceutical composition comprising the antibody of Group III. Since the Examiner will be searching for the antibody of Group II when examining claims of Group III, rejoining Groups II and III will not impose a serious burden on the Examiner.

Similarly, applicant respectfully requests that Groups I and IV be rejoined. Group I is drawn to, *inter alia*, peptides of formula I. For example, claim 1 is directed to a synthetic peptide of the formula I:



wherein

A is Ile, Leu, Val or a derivative thereof;

D is Leu, Ile, Val or a derivative thereof;

each X is an amino acid residue or derivative thereof which corresponds to an amino acid residue of an epitope of a native coiled-coil protein;

the X residues in each (AXXDXXX) repeat form a set of X residues; and n is equal to or greater than 1.

Group IV is drawn to vaccine compositions comprising the peptide of claim 1. Consequently, search and examination of Group IV along with Group I will not be a serious burden on the Examiner.

Accordingly, applicant respectfully requests the rejoining of Groups I and IV to a single group of claims 1-27, 35-41 and 57 (Group A), as well as the rejoining of Groups III and IV to a single group of claims 28-34 (Group B). Upon such rejoining, Applicants would elect Group A, claims 1-27, 35-41 and 57.

Species Election

The Examiner has further required a species election for Group I:

- a) Pneumococcal surface protein A.
- b) Pneumococcal surface protein B.
- c) Pneumococcal surface protein C.

Applicants elect species a), Pneumococcal surface protein A, without traverse. Claims 1-27 and 57 are readable upon this species.

Should the Examiner have any questions, a telephone call to the undersigned attorney for the Applicants would be appreciated.

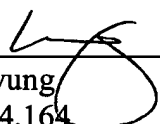
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Early examination of this application on the merits is earnestly solicited.

Respectfully submitted,

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Ping F. Hwung
Reg. No. 44,164

Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, California 94063
Telephone: (650) 839-5070
Facsimile: (650) 839-5071

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